

# New York Court Finds Private Right of Action Under State's Prompt Pay Law

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On February 22, 2012, a New York State Court held for the first time that a provider may bring a claim against a health insurer under the State's prompt pay law (PPL). New York's PPL states that where there is an undisputed obligation to pay a claim, the insurer must pay the provider within 30 days of receipt of an electronically transmitted claim, or within 45 days of receipt of a claim transmitted by any other means. In the past, violations of the PPL have generally been enforced by the Superintendent of the Insurance Department (now the Department of Financial Services) following its receipt of a provider (or patient) complaint.

In *Maimonides Medical Center v. First United American Life Insurance Company*, Maimonides, a Brooklyn Hospital, alleged that First United violated the PPL when it failed to timely pay the hospital for services it provided to six patients, each of whom were covered under a supplemental Medicare insurance plan issued by First United. First United argued that the PPL contains no express or implied private right of action and, therefore, the hospital's claims for relief should be dismissed. The court did not agree.

According to the court, one of the factors to consider in determining whether there exists an implied right of action is whether the creation of such a right would be consistent with the legislative intent of the statute. First United argued that the Superintendent's investigatory powers and ability to levy fines for violations of the PPL constitute evidence that the legislature contemplated purely administrative enforcement of the PPL.

But the court disagreed, stating that the PPL expressly provides that following a determination of a violation and imposition of penalties by the Superintendent, "**nothing ... shall limit, preclude or exempt an insurer or organization or corporation from payment of a claim and payment of interest pursuant to this section.**" According to the court, this "**unequivocal statutory language**" constitutes the legislature's express intent to confer a private right of action for patients and providers.

An appeal will certainly be filed and it will be interesting to see whether this decision is upheld. A bill that would explicitly add a private right of action is being considered by the New York State Senate and Assembly, and that could render the issue moot. Nevertheless, to the extent more state legislatures are revising, and more courts are interpreting, state prompt pay laws to confer a private right of action, we can expect to see an increase of managed care litigation in this area.

## Authors

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M. Daria Niewenhous is a Mintz Member with a well-established health care practice. National and local providers rely on Daria's experience to navigate capital projects, mergers & acquisitions, integration, and other strategic initiatives; adverse events; and licensing, contracting, patient care/risk management, and other complex legal matters.



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Nili S. Yolin helps Mintz's health care clients understand and navigate regulations to maximize business opportunities. Nili helps clients structure transactions, develop and implement compliance programs, and reduce liability risks.